

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
WACO DIVISION**

**COURTNEY PALACIOS,**  
*Plaintiff,*

**v.**

**MICHAEL TICE,**  
*Defendants.*

**6:18-CV-00325-ADA-JCM**

## **ORDER ADOPTING MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION**

Before the Court is the Report and Recommendation of United States Magistrate Judge Jeffrey C. Manske. ECF No. 37. The Report recommends that this Court grant-in-part Defendant's Motion for Summary Judgment (ECF No. 28) as to the due process and false arrest claims and deny-in-part as to the remaining claim. The Report and Recommendation issued on October 7, 2020.

A party may file specific, written objections to the proposed findings and recommendations of a magistrate judge within fourteen days after being served with a copy of the report and recommendation, thereby securing *de novo* review by the district court. 28 U.S.C. § 636(b); Fed. R. Civ. P. 72(b). A party's failure to timely file written objections to the proposed findings, conclusions, and recommendation in a report and recommendation bars that party, except upon grounds of plain error, from attacking on appeal the unobjected-to proposed factual findings and legal conclusions accepted by the district court. *See Douglas v. United Service Auto Ass'n*, 79 F.3d 1415, 1428–29 (5th Cir. 1996) (*en banc*).

Defendant timely filed Objections to the Report and Recommendation on October 21, 2020, and Plaintiff filed a Response to the Objections. ECF Nos. 38, 39. In light of Defendant's objections, the Court has undertaken a *de novo* review of the case file in this cause.

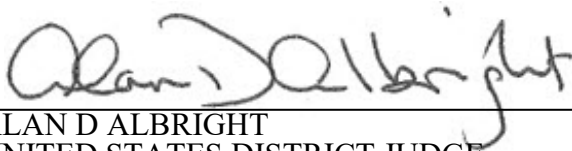
Defendant objects that Plaintiff failed to sufficiently plead a claim for “cross-gender strip search” because even if this act violated policies and procedures, it does not violate the Constitution. ECF No. 38 at 2 (citing *Samford v. Dretke*, 562 F.3d 674, 681 (5th Cir. 2009)). Defendant further objects because he testified that no “search” occurred, and no contrary evidence exists. ECF No. 38 at 2. Finally, Defendant argues that qualified immunity protects his actions. *Id.* at 3.

Having carefully reviewed the Magistrate Judge’s Report and Recommendation, the Defendant’s Objections to the Report and Recommendation, Plaintiff’s Response to the Objections, and this case file, the Court does not dispute the Magistrate Judge’s findings or his recommendation. The pleaded underlying facts sufficiently support a claim for cross-gender strip search regardless of any policies or procedures. Deponent testimony also supports that a search for a body piercing occurred. Finally, the Court agrees with the Report and Recommendation that Defendant fails to address Plaintiff’s cross-sex strip search claim and therefore fails to meet his burden to establish qualified immunity. ECF No. 37 at 9. Moreover, Courts throughout the country have universally frowned upon cross-gender strip searches in the absence of an emergency or exigent circumstances. *Harris v. Miller*, 818 F.3d 49, 59 (2d. Cir. 2016); *Moore v. Carwell*, 168 F.3d 234, 235-37 (5th Cir. 1999).

**IT IS THEREFORE ORDERED** that Defendant’s Objections (ECF No. 38) to the Report and Recommendation of the United States Magistrate Judge, (ECF No. 37) are **OVERRULED**.

**IT IS FURTHER ORDERED** that the Report and Recommendation of the United States Magistrate Judge (ECF No. 37), filed in this cause is **ACCEPTED AND ADOPTED** by the Court.

**SIGNED** this 21st day of January 2022.



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ALAN D ALBRIGHT  
UNITED STATES DISTRICT JUDGE